

# The Burger Court Opinion Writing Database

*Hisquierdo v. Hisquierdo*

439 U.S. 572 (1979)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

January 18, 1979

Dear Harry:

DR Re: 77-533 Hisquierdo v. Hisquierdo

FT I join.

77- Regards,

WBS

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 2, 1979

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RE: No. 77-533 Hisquierdo v. Hisquierdo

Dear Harry:

I agree.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

*Dec.*  
January 29, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-533, Hisquierdo v. Hisquierdo

In due course I shall circulate a dissenting opinion.

?S.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 11 JAN 1979

1st DRAFT

Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 77-533

Jess H. Hisquierdo, Petitioner, | On Writ of Certiorari to the  
v. | Supreme Court of Cali-  
Angela Hisquierdo. | fornia.

[January —, 1979]

MR. JUSTICE STEWART, dissenting.

We are asked in this case to decide whether federal law prohibits the State of California from treating as community property a divorcing husband's expectancy interest in pension benefits afforded under the Railroad Retirement Act of 1974. There can be no doubt that the State is free to treat this interest as property. *Herb v. Pitcairn*, 324 U. S. 117, 125-126. The only question, therefore, is whether something in the federal Act prevents the State from applying its normal substantive property law, under which assets acquired during marriage are commonly owned by the husband and wife. From the Court's own review of the Railroad Retirement Act, it is apparent to me that the asserted federal conflict with California community property law—far from being grounded upon the concrete expressions that ordinarily are required to support a finding of federal pre-emption, see, e. g., *Wissner v. Wissner*, 338 U. S. 655—is patched together from statutory provisions that have no relationship at all to substantive marital property rights. Indeed, the federal "policies" the Court perceives amount to little more than the commonplace that retirement benefits are designed to provide an income on retirement to the employee. There is simply nothing in the Act to suggest that Congress meant to insulate these pension benefits from the rules of ownership that in California are a normal incident of marriage.

5, 3, 9, 13

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated:

2nd DRAFT

Recirculated: 12 JAN 1979

## SUPREME COURT OF THE UNITED STATES

No. 77-533

Jess H. Hisquierdo, Petitioner, } On Writ of Certiorari to the  
v. } Supreme Court of Cali-  
Angela Hisquierdo. } fornia.

[January —, 1979]

MR. JUSTICE STEWART, with whom MR. JUSTICE REHNQUIST joins, dissenting.

We are asked in this case to decide whether federal law prohibits the State of California from treating as community property a divorcing husband's expectancy interest in pension benefits afforded under the Railroad Retirement Act of 1974. There can be no doubt that the State is free to treat this interest as property. *Herb v. Pitcairn*, 324 U. S. 117, 125-126. The only question, therefore, is whether something in the federal Act prevents the State from applying its normal substantive property law, under which assets acquired during marriage are commonly owned by the husband and wife. From the Court's own review of the Railroad Retirement Act, it is apparent to me that the asserted federal conflict with California community property law—far from being grounded upon the concrete expressions that ordinarily are required to support a finding of federal pre-emption, see, e. g., *Wissner v. Wissner*, 338 U. S. 655—is patched together from statutory provisions that have no relationship at all to substantive marital property rights. Indeed, the federal "policies" the Court perceives amount to little more than the commonplace that retirement benefits are designed to provide an income on retirement to the employee. There is simply nothing in the Act to suggest that Congress meant to insulate these pension benefits from the rules of ownership that in California are a normal incident of marriage.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 2, 1979

Re: No. 77-533 - Hisquierdo v. Hisquierdo

Dear Harry,

Please join me.

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 3, 1979

Re: No. 77-533 - Hisquierdo v. Hisquierdo

Dear Harry:

Please join me.

Sincerely,

*J.M.*

T.M.

Mr. Justice Blackmun

cc: The Conference

WTB  
Please forward me

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: DEC 29 1978

Recirculated: \_\_\_\_\_

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-533

Jess H. Hisquierdo, Petitioner, | On Writ of Certiorari to the  
v. | Supreme Court of Cali-  
Angela Hisquierdo. | fornia.

[January —, 1979]

Join?

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Petitioner Jess H. Hisquierdo in 1975 sued to dissolve his marriage with respondent Angela Hisquierdo. The Supreme Court of California, in applying the State's community property rules, awarded respondent an interest in petitioner's expectation of ultimately receiving benefits under the Railroad Retirement Act of 1974 (the "Act"), 88 Stat. 1305, 45 U. S. C. § 231 *et seq.* The issue here is whether the Act prohibits this allocation and division of benefits.

### I

The Railroad Retirement Act, first passed in 1934, 48 Stat. 1283, provides a system of retirement and disability benefits for persons who pursue careers in the railroad industry. Its sponsors felt that the Act would encourage older workers to retire by providing them with the means "to enjoy the closing days of their lives with peace of mind and physical comfort," and so would "assure more rapid advancement in the service" and also more jobs for younger workers.<sup>1</sup> Both employees and carriers pay a federal tax<sup>2</sup> which funds a Railroad Retirement Account. The Railroad Retirement Board, pro-

<sup>1</sup> H. R. Rep. No. 1711, 74th Cong., 1st Sess., 10 (1935).

<sup>2</sup> Railroad Retirement Tax Act, 26 U. S. C. §§ 3201-3233.

pp. 2, 8, 10, 14

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

Recirculated: 16 JAN 1979

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-533

Jess H. Hisquierdo, Petitioner, | On Writ of Certiorari to the  
v. | Supreme Court of Cali-  
Angela Hisquierdo. | fornia.

[January —, 1979]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Petitioner Jess H. Hisquierdo in 1975 sued to dissolve his marriage with respondent Angela Hisquierdo. The Supreme Court of California, in applying the State's community property rules, awarded respondent an interest in petitioner's expectation of ultimately receiving benefits under the Railroad Retirement Act of 1974 (the "Act"), 88 Stat. 1305, 45 U. S. C. § 231 *et seq.* The issue here is whether the Act prohibits this allocation and division of benefits.

I

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<sup>1</sup> H. R. Rep. No. 1711, 74th Cong., 1st Sess., 10 (1935).

<sup>2</sup> Railroad Retirement Tax Act, 26 U. S. C. §§ 3201-3233.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 2, 1979

No. 77-533 Hisquierdo v. Hisquierdo

Dear Harry:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

RENOVIST

January 11, 1979

Re: No. 77-533 Hisquierdo v. Hisquierdo

Dear Potter:

Please join me.

Sincerely,

*W.H.W.*

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 4, 1979

RE: No. 77-533 - Hisquierdo v. Hisquierdo

Dear Harry:

Please join me. Although I would prefer to omit footnote 24 on page 18, I do not condition my join on that suggestion.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference